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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

MARK A. MANN,

Plaintiff,

Case No. 6:14-cv-01774-AA

v.

**DECLARATION OF TELINA
THOMPSON IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

UNITED STATES OF AMERICA,

Defendant.

I, Telina Thompson, declare and state as follows:

1. I am currently the Freedom of Information Act (FOIA) coordinator for the Western Federal Lands Highway Division of the Federal Lands Highway (FLH) which is a part of the Federal Highway Administration (FHWA) within the United States Department of Transportation (USDOT).

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2. FLH provides transportation engineering and related services in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. These jurisdictions are serviced by three FLH Division Offices: Western Federal Lands Highway Division located in Vancouver, Washington; Central Federal Lands Highway Division located in Lakewood, Colorado; and Eastern Federal Lands Highway Division located in Sterling, Virginia.
3. My major responsibilities include processing requests made by the public pursuant to FOIA in the Western Federal Lands Division Office (WFLHD). I have held this position since September 2013. The exhibits attached to this declaration are true and correct copies of documents related to this litigation and these records are maintained as part of the regularly conducted business of my office.
4. On March 26, 2014, WFLHD received a FOIA request from Plaintiff Mr. Mark Mann. The request was assigned FOIA Control No. 2014-0234. The Plaintiff revised his request on March 28, 2014. Exhibit 1. The Plaintiff's requested the following items from the Tiller Trail Highway Project, OR PFH 16(7): 1) Geopak CAD design file in MicroStation DGN format; 2) LandXML file of the horizontal and vertical alignments; 3) LandXML file of the original ground surface; 4) LandXML file of the final design surface.
5. During the FOIA process, Plaintiff explained that he performed work for the general contractor on the Tiller Trail Highway Project and requested the design data in order to facilitate the efficient construction of the project. Exhibit 2.
6. In order to locate all responsive documents, I determined that the Tiller Trail Highway Project, OR PFH 16(7) was a construction project that had been designed, solicited and

constructed by WFLHD. Accordingly, I sent a request for all responsive documents to WFLHD construction staff, central records, acquisitions and design team that had been involved with the design, acquisition or construction of the project. In response to my request, I received 21 responsive records from the design team at WFLHD. I did not receive any LandXML or XSR files.

7. The Plaintiff indicated that the LandXML files would need to be generated. Exhibit 3. Due to the nature of the Plaintiff's FOIA request and his representations that the requested XML files would need to be generated from engineering software used by WFLHD, I contacted Juan Aguirre, the Engineering Systems Coordinator for WFLHD, for assistance in responding to the Plaintiff's request.
8. On May 1, 2014, WFLHD provided the Plaintiff its determination with respect to his FOIA request. Exhibit 4. The Plaintiff was provided all 21 of the responsive files WFLHD maintained in the format in which WFLHD maintained them. Exhibits 5 and 6.
9. On September 29, 2014 Plaintiff filed a new FOIA request, FOIA Control No. 2014-0457. Exhibit 7. Plaintiff requested the following information: (1) GEOPAK XS-List (cross-section files in XSR format) of the original ground surface; (2) the horizontal and vertical alignments for the road design in XML format; (3) the original ground three-dimensional surface date that is used to generate the final design, generate earthwork quantities, and define existing site features such as drainages, existing utilities, etc., in XML format; (4) the final design three-dimensional surface data in XML format.
10. I indicated in the May 1, 2014 response to Plaintiff's FOIA request, FOIA Control No.

2014-0234 that XSR cross section files would be posted to the ftp site. Exhibit 4. I also indicated in the October 14, 2014 response to Plaintiff's FOIA request, FOIA Control No. 2014-0457 that the XSR cross section files had been posted to the ftp site. Exhibit 8. This was not correct. At the time, I believed one of the 21 files that had been produced which had the electronic file name "ORPFH16(7)_XS_R2.dgn" was an XSR file. I later learned that the "XS_R2" portion of the electronic file name did not indicate that it was the XSR file type that the Plaintiff had originally requested. Exhibit 6.

11. WFLHD did not at the time of Plaintiff's FOIA requests and does not as of the date of this declaration, possess any XSR or XML files for the Tiller Trail Highway Project.
12. WFLHD handles FOIA requests for 5 western states: Alaska, Idaho, Oregon Montana, and Washington. I have reviewed all FOIA requests processed by WFLHD dating back to 2005. As of the date of this declaration, WFLHD has processed 207 FOIA requests since 2005. I did not find a single request for either LandXML or XSR files during my review of FOIA requests processed by WFLHD.
13. I personally contacted the FOIA coordinators in the Central Federal Lands Highway Division Office and the Eastern Federal Lands Division Office. I asked each of the FOIA coordinators to run the same query back to 2005 to determine whether either of their Divisions had received a request for LandXML files. The FOIA coordinators in both of these offices indicated that they found no records of a request for LandXML or XSR files.
14. While it is possible that an employee in WFLHD has produced LandXML files to Plaintiff at some point in time for a different construction project, such production was not done in response to a FOIA request.

15. I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 4 day of May 2015.

Telina Thompson
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